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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 447

LAND O'LAKES DAIRY COMPANY,
Appellant,

vs.

COUNTY OF WADENA AND STATE OF MINNESOTA

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 447

LAND O'LAKES DAIRY COMPANY,
Appellant,

vs.

COUNTY OF WADENA AND STATE OF MINNESOTA,
Appellees

APPELLEES' STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now the appellees above named and, under the provisions of Rule 12, par. (3), of the Rules of this Court, make the following statement disclosing matters and grounds making against the jurisdiction of this Court asserted by the appellants, and include herein their motion to dismiss or affirm the judgments sought to be reviewed in this appeal:

(1) The appellant has consolidated in this one appeal two separate and distinct cases. The case in which Land

O'Lakes Dairy Company is plaintiff is one in which the judgment denies an injunction enjoining the enforcement of a judgment recovered by the State against real property of the company. The case in which the State of Minnesota is plaintiff is one in which the State recovered a judgment against the company for personal property taxes. There is only one citation of appeal to this Court. There is only one petition for allowance of appeal to this Court. There is only one order allowing appeal and fixing and approving bond. There is only one bond for costs on appeal and supersedeas bond which is characterized by the company as a composite bond. This procedure upon appeal is not in compliance with the rules of this Court relating to appeals. This procedure denies to the State of Minnesota the right to proceed separately as it may deem proper in each case. The use of one bond, termed a composite bond, subjects the State of Minnesota to uncertainties and questions if enforcement thereof should become necessary which would not be present if the company had complied with the rules of this Court and perfected two separate appeals. It is the prerogative of this Court to determine if two separate and distinct cases are to be consolidated. There is present in the case in which the State of Minnesota is plaintiff the question of *res adjudicata* which is not in the other case. The State of Minnesota is entitled under the rules of this Court to separate appeals from the respective judgments.

(2) The questions upon which the decision in each of the above cases depends are so unsubstantial as not to need further argument, as will appear from the following discussion.

(a) The effect of the transaction between appellant and the Government was that the Government provided $415,285.51, the cost of a processing plant for dried milk products,

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which appellant conveyed to the Government by an instrument which provided that when the Government's investment was repaid, title would revert to appellant. Record below p. 52. Simultaneously, the Government leased the plant to appellant at a rental calculated to repay the Government the amount of its investment. The annual rent was to be 11 percent of the total cost to the Government if the lease ran ten years. If it ran longer, the rent was to be ten dollars per month. Record below pp. 23, 47.

Appellant states, Appellant's Statement, page 15, that the issue on this appeal is whether the contract, deed and lease vested in the Government the equity in the property. To rephrase the issue common to both cases but not decisive in *State* v. *Land O'Lakes Dairy Company*, it is this: Is the conveyance, the combined warranty deed and bill of sale, in form and substance a mortgage of both realty and personalty vesting equitable title in the dairy company which is subject to nondiscriminatory taxation?

The law decisive of this issue is not unsettled. It has been determined by this Court in the cases cited below by the Supreme Court of Minnesota. The appellant's contentions with respect thereto are unsubstantial.

The Supreme Court of Minnesota, upon the authority of *United States* v. *Shelby Iron Co.*, 273 U. S. 571, 47 S. Ct. 515, 71 L. Ed. 781; *S. R. A. Inc.* v. *Minnesota*, 327 U. S. 558, 66 S. Ct. 749, 90 L. Ed. 851, *Virginia Shipbuilding Corp.* v. *United States* (4 Cir.) 22 F. 2d 48, held that the transaction was an equitable mortgage—that the beneficial interest was in appellant, the mortgagor, and that that interest was taxable by the State. Appellant's Statement, Appendix A, p. 37.

(b) The rights of the Government, as equitable mortgagee, are not affected by the tax. The Supreme Court of

Minnesota has determined that the rights acquired by the State in the proceedings to enforce payment of the tax are subordinate to those of the Government. Appellant's Statement, Appendix A, p. 38. The construction of the State statute "and the conformity to it of the proceedings of the taxing officials were questions exclusively for the Supreme Court of the State • • •." *Elder* v. *Wood*, 208 U. S. 226, 28 S. Ct. 263, 52 L. Ed. 464.

Where the paramount right of the United States is protected, there is no impediment to taxation by the State. *City of New Brunswick* v. *United States*, 276 U. S. 547, 48 S. Ct. 371, 72 L. Ed. 693. Appellant's contention that Government immunity has been violated because "the tax statutes applied to this property allow for no assessment of separate interests in the property" (Appellant's Statement, p. 19, was fully answered by *S. R. A.* v. *State of Minnesota*, 327 U. S. 558, 66 S. Ct. 749, as follows:

> "The only other contention of petitioner which we need mention is that the state has included the interest of the United States in the valuation of the land, and has therefore subjected that interest to taxation. But no deduction need be made for the interest of the Government since that interest is for security purposes only and is not beneficial in nature. The whole equitable ownership is in the petitioner and the value of that ownership may be ascertained on the basis of the full value of the land."

(c) Appellant is a private corporation which covenanted to pay "all taxes assessed" against the property. Record p. 33. It should not be permitted to avoid payment of the tax on its beneficial, taxable interest in the land by asserting that the interest of the United States is beyond the reach of State taxation. Appellant does not represent the United States. *Northern Pacific Railroad* v. *Patterson*, 154 U. S.

130, 134. As expressed in *Graves* v. *People of State of New York*, 306 U. S. 466, 59 S. Ct. 595, where immunity from taxation "is invoked by the private citizen it tends to operate for his benefit at the expense of the taxing government and without corresponding benefit to the government in whose name the immunity is claimed."

(d) This paragraph has reference only to the case involving real property in which Land O'Lakes Dairy Company is the plaintiff. In this case the appellant is bound by the finding of the trial court in its memorandum "to the effect that the transaction between the government and the dairy company was a mortgage and that the rights acquired by the State in the proceedings to enforce payment of the real estate taxes were 'subordinate' to those of the government in the real estate" by its failure to assign as error in the Supreme Court of Minnesota the making of these findings by the trial court. Appellant's Statement, Appendix A, p. 38. These findings were final on appeal. *Ibid.* The appellant is foreclosed from challenging in this Court the above findings. The appellant recognized the effect of its failure to make the proper assignments of error in the court below by making in the Supreme Court of Minnesota a motion for leave to amend, *nunc pro tunc*, its assignments of error. We shall not quote from this motion. It is coupled with appellant's petition for reargument as an alternative motion. No federal right is involved in the holding of the Supreme Court of Minnesota that under Minnesota law the appellant is bound by its own failure to make an assignment of error as required by Minnesota law. This is purely a question of state procedure. *United Gas Co.* v. *Texas*, 303 U. S. 123, 139, 58 S. Ct. 483, 82 L. Ed. 702, *John, Guardian* v. *Paullin*, 231 U. S. 583, 34 S. Ct. 583, 58 L. Ed. 381, *Pennsylvania Railroad*

Co. v. *Illinois Brick Co.*, 297 U. S. 447, 463, 56 S. Ct. 556, 80 L. Ed. 796, *Chicago, Indianapolis and Louisville Railway Company* v. *McGuire*, 196 U. S. 128.

For these reasons, the questions raised by appellant in the real property case in which appellant is plaintiff are so unsubstantial as not to need further argument.

(e) This paragraph has reference only to the case involving personal property in which the State of Minnesota is the plaintiff. The Supreme Court of Minnesota in an action for a declaratory judgment with reference to the taxes upon the personal property here involved held that the Land O'Lakes Dairy Company was not entitled to a declaratory judgment adjudging that the personal property here involved was exempt from taxation. *Land O'Lakes Dairy Co.* v. *Village of Sebeka*, 225 Minn. 540, 31 N.W. (2d) 660. Record below p. 75. In the case now before this Court the Supreme Court of Minnesota held that the judgment in the declaratory judgment action in the case found in 225 Minn. 240 is *res adjudicata* of the dairy company's liability for the tax on the personal property here involved. Appellant's Statement, Appendix A, p. 42. The decision of the Supreme Court of Minnesota that the former judgment is *res adjudicata* presents no federal question in this case. *Northern Pacific Railroad Company* v. *Ellis*, 144 U. S. 458, 36 L. Ed. 504, 12 S. Ct. 724, *Western Electrical Supply Company* v. *Abbeville Electric Light and Power Company*, 197 U. S. 299, 49 L. Ed. 765, 25 S. Ct. 481.

For these reasons, the judgment in the personal property case rests on adequate nonfederal grounds and the questions raised by appellant in this case are so unsubstantial as not to need further argument.

Wherefore appellees respectfully submit this statement showing that the questions upon which the decisions of the above entitled causes depend are so unsubstantial as not

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to need further argument and appellees respectfully move the Court to dismiss this appeal of the above entitled causes or in the alternative to affirm the respective judgments entered below in the above entitled causes.

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